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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 647 OF 2022

Vishnu Rajaram Thakar

...Petitioner

Vs.

**State of Maharashtra,
Through Its Secretary,
Tribal Development Dept.
and Anr.**

...Respondents

Mr. R.K. Mendadkar a/w. Tanaji Jadhav for Petitioner
Mrs. P.J. Gavhane, AGP for Respondents/State

**CORAM : SUNIL B. SHUKRE &
G.A. SANAP, JJ**

DATED : 9TH MARCH, 2022

P.C.:

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally by consent of parties.
3. The impugned shown cause notices dated 2nd May, 2018 and 24th August, 2018 issued by Respondent No.2 - Scheduled Tribe Certificate Scrutiny Committee, Pune, seeking to cancel the certificate of Tribe Validity granted to the Petitioner are questioned for their correctness or otherwise in this petition.

4. Shri Mendadkar, learned counsel for the Petitioner submits that these notices could not have been issued for several reasons.

Firstly, the reason for issuance of these notices was invalidation of the Tribe of certificate of Kumari Sneha Vishnu Thakar, the daughter of the Petitioner and this reason having been taken away owing to grant of validity certificate to Sneha Vishnu Thakar, the very basis of the show cause notices now does not exist.

Secondly, it is submitted that merely because some entries were not produced before the Scrutiny Committee, it would not, by reason of such failure alone, result in conclusion of the Petitioner having suppressed the material facts.

Thirdly, learned counsel further submits that some of the entries were discovered later on and so the Petitioner could not be blamed for any suppression of facts. He relies upon the view taken by the Co-ordinate Bench of this Court of Nagpur in the case of **Anil s/o Shivram Bandawar vs. District Caste Certificate Verification Committee, Gadchiroli and Anr [2021(5) Mh.L.J., 345]**, wherein this Court, Nagpur Bench, has held that failure to refer to old revenue records when same could have been verified by the Scrutiny Committee during the earlier verification would not

amount to fraud.

Fourthly, the learned counsel submits that finding variance between the information given by the Petitioner as regards the rituals and customs and the information given by the daughter of the Petitioner in respect of the customs and rituals, the Scrutiny Committee erroneously held that Petitioner failed in affinity test. He submits that variance to some extent is bound to be there due to generation gap. He submits that while older people would have more knowledge about the customs and tradition of the family, the younger generation may not have so much of knowledge and, therefore, if any variance in two sets of information occurs, the same has to be seen as natural and not something which amounts to misrepresentation of the facts.

5. Fifthly, learned counsel further submits that the scrutiny committee has no power to review its own order as no such power is expressly conferred upon it under Section 7(2) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Category and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 or any other provision of law. On the contrary, he further submits, Section 7(2) accords finality and unassailability to orders of the Committee, except under extra-ordinary jurisdiction of this Court.

6. The Learned AGP taking an exception to the submissions of the learned counsel for the Petitioner, argues that although there is no power of review expressly conferred under the said Act on the Scrutiny Committee, the Scrutiny Committee has the power to reconsider its earlier decision, if it was obtained by practicing fraud or suppressing facts or misrepresenting facts, and in this case the misrepresentation was writ large. She further submits that by virtue of judicial pronouncements, the power of reconsideration of the old decisions of the Scrutiny Committee has been created and has been seen to be inhering in the Scrutiny Committee, in those cases where it is seen that the validity certificate or caste / tribe certificate has been obtained by suppressing the facts or by playing fraud or by misrepresenting facts. She relies upon the view taken by this Court, Bench at Aurangabad, in the case of **Jyoti Sheshrao Mupde v State of Maharashtra in Writ Petition No. 1954/2009 decided on 22/08/2012**, wherein, it has been held that in cases where a practice of fraud or misrepresentation of facts or suppression of facts, is noticed, the Scrutiny Committee may take up such a case for reconsideration by following proper procedure. She submits that not producing the material entries and not giving detailed information, would amount to suppression of facts and also misrepresentation of facts.

7. Although these points of arguments have been put forward at length, we do not think it necessary to consider them all. The reason being that this is a case wherein the very basis of impugned notices has been wiped out due to subsequent events.

8. Both the show causes notices were premised on the fact that during the course of inquiry into tribe certificate of Sneha Vishnu Thakar, the daughter of the Petitioner, it was noticed that certain documents / certain entries were not produced and some information that was given by the Petitioner in that proceeding, did not tally with the information given by this Petitioner. But, the other Bench of this Court, before whom the order of invalidation of Tribe certificate of Sneha Vishnu Thakar was challenged by her, directed the same Scrutiny Committee to issue validity certificate to Sneha Vishnu Thakar forthwith and complying with the order, the validity certificate was also issued to Sneha Vishnu Thakar. That validity certificate has attained finality now. Not only that, as pointed out by the learned counsel for the Petitioner, subsequently the same Scrutiny Committee issued yet another Tribe Validity Certificate to Saurabh Vishnu Thakar, son of the Petitioner. This validity certificate is produced before this Court and it is marked 'A' for identification. It has been issued on 8th December, 2021. So far there is no doubt about this validity certificate. These subsequent events sweep away the very foundation of the

impugned notices rendering them illegal.

9. There is, however, one aspect which needs to be clarified. It is about the availability of statutory power of review with the Scrutiny Committee. It has been held in several judgments that the Scrutiny Committee has no power of review, there being no provision expressly conferring it on the Scrutiny committee. In the case of **Devendra Gurunath Khedgikar Vs. The Scheduled Tribe Certificate Scrutiny Committee, Pune and Anr. [2009(2) ALL MR 869]**, the Division Bench has laid down that a quasi Judicial authority cannot review its own order unless the power of review is expressly conferred by the Statute on it and that the power of review not being an inherent power, the Scrutiny Committee would have no power to review its own order. At the same time, it is also held that the principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. Therefore, it is also held that if there is any playing of fraud or suppression of material facts or misrepresentation of facts, the Scrutiny Committee can reconsider the order of validity passed by it earlier and upon consideration of merits of the matter, it confined to aspects of fraud, suppression or misrepresentation of facts, it can recall it's order. Similar is the view taken in the case of **Jyoti Sheshrao Mupde (supra)**, relied upon by the learned AGP. It holds that

whenever there is an order obtained by playing fraud or by suppressing material facts or misrepresenting the facts, the Scrutiny Committee shall have the power to reconsider its order. This is also the view taken by the Division Bench of this Court at Aurangabad in the case of **Rajeshwar Baburao Bone Vs. State of Maharashtra and Anr. in Writ Petition No. 5160 of 2012 decided on 17th December, 2012** fairly referred to us by the learned counsel for the Petitioner.

10. But, in the present case, this power of reconsideration, however, cannot be exercised by the Scrutiny Committee as the very basis of impugned show cause notices has been taken away.

11. In the result, we are of the view that the petition deserves to be allowed. The impugned show cause notices are quashed and set aside.

12. Rule is made absolute in the above terms.

13. No order as to costs.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)